

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

<b>IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>	<b>Master File No. 2:12-MD-02327 MDL No. 2327</b>
<b>THIS DOCUMENT RELATES TO ETHICON WAVE 1 CASES</b>	<b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>

**DEFENDANTS' MOTION TO EXCLUDE  
CERTAIN GENERAL OPINIONS OF JERRY BLAIVAS, M.D.**

Defendants Ethicon, Inc. and Johnson & Johnson (hereinafter "Defendants") move to exclude certain general opinions of one of Plaintiffs' experts, Jerry Blaivas, M.D., that are improper and/or are beyond his expertise as a urologist. Specifically, Defendants request that the Court preclude Dr. Blaivas from: (1) Testifying that the Defendants' devices are not safe in the treatment of stress urinary incontinence, because such opinions are unreliable and based on a standard different from that which he employs in his medical practice; (2) Testifying that traditional surgical approaches are a safer alternative to the devices at issue, because such procedures are not alternative designs and are irrelevant to a design-defect claim and because such opinions are unreliable; (3) Offering design opinions because he is not qualified to do so and his opinions are unreliable and not offered within a reasonable degree of medical certainty; (4) Offering biomaterials opinions, including testimony about alleged mesh degradation, shrinkage, and other deformations opinions, because he is not qualified to do so and such opinions are unreliable, irrelevant, and/or otherwise improper; (5) Testifying about inflammatory alleged conditions, because such opinions are irrelevant, highly inflammatory, and prejudicial;

(6) Offering warning opinions, because he is not qualified to do so and such opinions are irrelevant and inadmissible; (7) Testifying about testing, because he is not qualified to do so and such opinions are irrelevant, speculative, and unreliable; (8) Offering opinions suggesting bias, industry manipulation, and/or collusion, because such opinions are completely unsupported and unreliable; and (9) Offering opinions beyond Dr. Blaivas's expertise and/or that are otherwise improper, because he is not qualified to do so and such opinions are speculative, unreliable, and/or is merely based on a narrative summary of Defendants' documents.

As grounds for this motion, Defendants submit that Dr. Blaivas cannot provide reliable, trustworthy and/or admissible testimony about these topics under the standard set forth in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). In support of this motion, Defendants incorporate by reference their accompanying memorandum of law and rely on the following Exhibits:

1. List of cases in which Dr. Blaivas has been designated by Plaintiff(s) as a general expert, Exhibit A;
2. Dr. Blaivas's TVT General Expert Report, Exhibit B (and Exhibit A thereto, Dr. Blaivas's Curriculum Vitae);
3. Dr. Blaivas's TVT-O General Expert Report, Exhibit C;
4. Dr. Blaivas's TVT-Secur General Expert Report, Exhibit D;
5. Dr. Blaivas's TVT-Exact General Expert Report, Exhibit E;
6. Dr. Blaivas's TVT Abbrevio General Expert Report, Exhibit F;
7. Dr. Blaivas's Prolift General Expert Report, Exhibit G;
8. Transcript of Dr. Blaivas's September 2015 Deposition (and Exhibits 4, 5, 12, 18, 20, 21 & 29 thereto), Exhibit H;
9. *Blaivas, et al.*, "Salvage Surgery after Failed Treatment of Synthetic Mesh Sling Complications," *The Journal of Urology*, v. 190, p. 1284 (2013), Exhibit I;

10. Transcript of Dr. Blaivas's December 15, 2014 Deposition, Exhibit J;
11. ETH.MESH.00262089, -08692936, -02123291, -8696084, Exhibit K;
12. American Urological Association Guideline for the Surgical Management of Female Stress Urinary Incontinence: 2009 Update, Exhibit L;
13. Blaivas and Chaikin, *Pubovaginal Fascial Sling for the Treatment of all Types of Stress Urinary Incontinence: Surgical Technique and Long-term Outcome*, Urologic Clinics of N. Am. (Feb. 2011), Exhibit M;
14. Blandon, et. al., *Complications from vaginally placed mesh in pelvic reconstructive surgery*, The International Urogynecological Association (2009), Exhibit N;
15. Blaivas, et. al., *Pubovaginal Fascial Sling For All Types of Stress Urinary Incontinence: Long-Term Analysis*, The Journal of Urology (1998), Exhibit O;
16. Excerpt from Pubovaginal Sling Female Urology textbook, Exhibit P;
17. Excerpt from Transcript of September 26, 2015 Deposition of Dr. Daniel Elliott, Exhibit Q;
18. Bhoyrul, et. al., *Trocar Injuries in Laparoscopic Surgery*, American College of Surgeons (June 2001), Exhibit R;
19. Shindel, et. al., *Urethral Slings Placed by the Transobturator Approach: Evolution in the Technique and Review of the Literature*, Current Urology Reports (2005), Exhibit S;
20. ETH.MESH.09911296, Exhibit T;
21. Excerpts from Dr. Blaivas's January 30, 2014 Deposition, Exhibit U;
22. Excerpts from Dr. Blaivas's August 13, 2015 Deposition, Exhibit V;
23. ETH.MESH.02026591, Exhibit W;
24. *Bellew v. Ethicon, Inc.*, No. 2:13-cv-22473, Order (S.D. W. Va. Nov. 20, 2014), Exhibit X;
25. Rogo-Gupta, et. al., *Trends in the Surgical Management of Stress Urinary Incontinence Among Female Medicare Beneficiaries, 2002-2007*, Exhibit Y

WHEREFORE, FOR THESE REASONS and as more fully set forth in Ethicon's supporting memorandum of law, Ethicon respectfully requests that this Court enter an order granting Ethicon's Motion to Exclude the Testimony of Dr. Jerry Blaivas, M.D.

Respectfully Submitted,

/s/ Christy D. Jones

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CERTIFICATE OF SERVICE

I, Christy D. Jones, certify that on April 21, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ Christy D. Jones

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